



## Section 404 of the Clean Water Act

# Policy and Guidance

## Policy and Technical Guidance Documents

### Section 404 Jurisdiction

#### General

**1979 "Civiletti" Memorandum** (4 pp, 86K) - US Attorney General opinion on ultimate administrative authority under Section 404 to determine the reach of navigable waters and the meaning of Section 404(f).

**1989 Memorandum of Agreement** - allocates responsibilities between EPA and the Corps for determining the geographic scope of the Section 404 program and the applicability of exemptions from regulation under Section 404(f).

#### Information pertaining to Wetlands Delineation

#### Geographic Jurisdiction

#### Information pertaining to Clean Water Act definition of "Waters of the United States"

### Dredged Material

#### *Background Materials*

**Information pertaining to Revisions to Clean Water Act Regulatory Definition of "Discharge of Dredged Material"**, January 17, 2001, Final Rule

**Revisions to the Clean Water Act Regulatory Definition of "Discharge of Dredged Material,"** May 10, 1999, Final Rule

**Memorandum on Issuance of Final Rule Responding to National Mining Association Decision**, May 10, 1999 joint memorandum from EPA and the U.S. Army Corps of Engineers

**Guidance Regarding Regulation of Certain Activities in Light of American Mining Congress v. Corps of Engineers**, April 11, 1997 guidance from EPA and the U.S. Army Corps of Engineers.

#### Dredged Material Management

## **Comparison of Dredged Material to Reference Sediment**

The Environmental Protection Agency (EPA) is proposing to revise the Clean Water Act Section 404(b)(1) Guidelines (Guidelines) to provide for comparison of dredged material proposed for discharge with "reference sediment," for the purposes of conducting chemical, biological, and physical evaluations and testing.

**Inland Testing Manual** - This joint EPA and Corps document, "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S. - Testing Manual" (ITM), provides guidance regarding technical protocols under Section 404 for evaluating proposed discharges of dredged material associated with navigational dredging projects.

**Beneficial Use of Dredged Material** - An important goal of managing dredged material is to ensure that the material is used or disposed of in an environmentally sound manner. The Federal Standard Paper provides guidance on using dredged material as a resource to achieve environmental and economic benefits and is intended as a companion piece to the Beneficial Use Planning Manual.

## **Dispute Resolution under Section 404(q)**

**1992 Memorandum of Agreement** - establishes procedures for the Corps and EPA to minimize delays and resolve disputes in the issuance of Section 404 permits.

### **404(q) Fact Sheet**

### **Chronology of 404(q) Actions**

### **Memoranda on 404(q) Coordination**

- 2002 Memorandum on Designation of Aquatic Resources of National Importance under Clean Water Act Section 404(q)
- 2006 Memorandum on Coordination between EPA Regional Offices and Headquarters on Clean Water Act Section 404(q) Actions
- 2008 Memorandum on Revised Coordination between EPA Regional Offices and Headquarters on Clean Water Act Section 404(q) Actions

## **Compensatory Mitigation/Mitigation Banking**

### **Information pertaining to Section 404 Compensatory Mitigation**

### **Wetlands on Agricultural Lands**

**1990 Memorandum to the Field** - explains the applicability of the Section 404 program to agriculture and clarifies agricultural exemptions under section 404(f).

**Regulatory Guidance Letter 96-02** [Exit](#) - joint Army Corps/EPA RGL on the applicability of exemptions under Section 404(f) to "Deep-Ripping" Activities in Wetlands.

### **Wetlands and Forestry**

**Summary of the Forestry Resolution**- outlines the innovative resolution of a long-standing silvicultural issue affecting forested wetlands in the Southeast. The guidance clarifies where a wetlands permit is not needed when certain 'Best Management' practices are conducted in association with forestry site preparation.

**1995 Forestry Guidance** - the full text of the guidance.

## **Coral Reef Guidance**

**1999 Memorandum to the Field** - emphasizes the protection afforded the Nation's valuable coral reef ecosystems under the Clean Water Act (CWA) Section 404 regulatory program, the Marine Protection, Research, and Sanctuaries Act (MPRSA) Sections 102 and 103 provisions, Rivers and Harbors Act (RHA) Section 10 requirements, and Federal Projects conducted by the Corps.

## **Regulatory Flexibility**

**1995 Memorandum to the Field** - identifies regulatory flexibility under Section 404 of the Clean Water Act to those small landowners impacting less than two acres of wetlands on their property.

**1993 Memorandum to the Field** - clarifies that the level of review associated with a permit application is linked to the nature of anticipated environmental impacts. Thus, small projects with fewer impacts require less review.

## **Transportation**

**Eco-Logical** - Eight federal agencies (BLM, DOI, EPA, FHWA, NOAA, NPS,USACE and USFWS) have agreed on an ecosystem approach for addressing natural resource identification, avoidance, minimization and mitigation into a systematic, step-wise process that starts at the beginning of the transportation planning process and concludes with establishing programmatic approaches to recurring natural resource issues that are implemented at the project level.

## **Surface Coal Mining Operations**

**Surface Coal Mining Initiative Actions** - This page provides updates and background information regarding EPA's recent activities under the Clean Water Act Section 404, Clean Water Act Section 402, and National Environmental Policy Act (NEPA).

**Joint Procedures Framework MOU for Surface Coal Mining Permit Applications** - February 10, 2005 - The U.S. Office of Surface Mining (OSM), U.S. Army Corps of Engineers (COE), U.S. Environmental Protection Agency (EPA), and U.S. Fish and Wildlife Service (FWS) have coordinated in the development of a Memorandum of Understanding (MOU) to improve coordination and information sharing among the agencies responsible for reviewing and processing Surface Mining Control and Reclamation Act (SMCRA) and Clean Water Act (CWA) Section 404 dredge and fill permits.

**EPA/Corps Memo on CWA Requirements and Coal Mining Operations** - May 5, 2003.

**1999 Memorandum of Understanding** - establishes a process for improving coordination among the U.S. Office of Surface Mining, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and West Virginia Division of Environmental Protection, in the review of permit applications required for surface coal mining and reclamation operations resulting in the placement of excess spoil fills in the waters of the United States in West Virginia.

## **Wetlands and Water Quality**

**1990 National Guidance** - Water Quality Standards for Wetlands - assists States in applying their water quality standards regulations to wetlands.

## **Wetlands and Non-point Source Control**

**1990 National Guidance: Wetlands and Non-Point Source Control** - describes how State non-point source programs can use the protection of existing wetlands and the restoration of previously lost or degraded wetlands to meet the water quality objectives of adjacent or downstream water bodies.

## **Enforcement**

**1989 Memorandum of Agreement** - establishes the allocation of enforcement responsibilities between EPA and the Corps for Section 404 of the Clean Water Act.

## **Corps Regulatory Guidance Letters**

**RGLs on the Corps of Engineers Home Page** access to the guidance the Corps issues to its field staff.

Last updated on March 21, 2016